

Message Text

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ACTION EA-12

INFO OCT-01 ISO-00 EB-08 SP-02 USIA-15 AID-05 NSC-05

TRSE-00 SS-15 STR-07 OMB-01 CEA-01 CIAE-00

COME-00 FRB-01 INR-07 NSAE-00 XMB-04 OPIC-06

LAB-04 SIL-01 L-03 H-02 PA-02 PRS-01 AGRE-00

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-----111585 010627Z /10

R 010248Z FEB 78

FM AMEMBASSY MANILA

TO SECSTATE WASHDC 1092

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E.O. 11652: N/A

TAGS: EINV, EIND, EFIN, RP

SUBJ: UPDATE OF INVESTMENT CLIMATE STATEMENT

REFS: A. 77 STATE 244738, B. 77 MANILA A-251

1. SUMMARY. THIS CABLE IS TEXT OF UPDATED PHILIPPINE INVESTMENT CLIMATE STATEMENT REQUESTED IN REFTEL. END SUMMARY.

2. THE PHILIPPINES EXTENDS A SELECTIVE WELCOME TO FOREIGN INVESTMENT. FOREIGN INVESTMENT IS ACTIVELY ENCOURAGED IN "PIONEER" INDUSTRIES, AND ON A 40 PERCENT MINORITY BASIS IN "PREFERRED NON-PIONEER" INDUSTRIES. IT IS ACCEPTABLE, BUT NOT ENCOURAGED, IN NON-PRIORITY AREAS IN WHICH EXISTING PRODUCTION CAPACITY IS INSUFFICIENT TO SUPPLY THE MARKET. IT IS NOT ALLOWED IN "OVERCROWDED" AREAS WHERE EXISTING CAPACITY IS DEEMED SUFFICIENT.

3. A MAXIMUM PERCENTAGE OF FOREIGN OWNERSHIP IS SPECIFIED BY LAW IN SEVERAL BUSINESS AREAS. THE MOST IMPORTANT OF THESE ARE LAND OWNERSHIP, PUBLIC UTILITIES, AND NATURAL RESOURCES (LIMITED TO COMPANIES WITH 60 PERCENT FILIPINO OWNERSHIP), AND RETAIL TRADE (100 PERCENT FILIPINO). HOWEVER, THE BOARD OF

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INVESTMENTS (BOI) IS AT PRESENT FOLLOWING A POLICY OF FURTHER RESTRICTING FOREIGN INVESTMENT IN NATURAL RESOURCES COMPANIES TO 30 PERCENT. THE GOP DEPARTMENT OF JUSTICE, THROUGH ITS RULINGS AND LEGAL OPINIONS, HAS ADOPTED A NATIONALISTIC POLICY. IT HAS BARRED MINORITY FOREIGN INVESTORS FROM PARTICIPATION IN CORPORATE DECISION-MAKING IN AREAS COVERED BY THE NATIONALITY RE-

QUIREMENTS, AND MONITORS CLOSELY SERVICE CONTRACTS BETWEEN FOREIGN AND LOCAL COMPANIES WHICH IT DECLARES COULD BECOME A MEANS OF CIRCUMVENTING THE CONSTITUTIONAL 40 PERCENT LIMIT ON FOREIGN INVESTMENT IN THE MINING INDUSTRY, AMONG OTHERS.

4. ALL FOREIGN INVESTORS DO ENJOY BASIC RIGHTS AND GUARANTEES UNDER THE CONSTITUTION, INCLUDING FREEDOM FROM EXPROPRIATION WITHOUT JUST COMPENSATION. THEY ARE ALLOWED TO REMIT EARNINGS ON INVESTMENTS, ROYALTY PAYMENTS, PRINCIPAL AND INTEREST ON FOREIGN LOANS AND TO REPATRIATE INVESTMENTS IN THE CURRENCY IN WHICH THEY WERE ORIGINALLY MADE.

5. THE BOI PASSES ON ALL INVESTMENT APPLICATIONS WITH 30 PERCENT OR MORE FOREIGN EQUITY UNDER THE FOREIGN BUSINESS REGULATION, INVESTMENT AND EXPORT INCENTIVES ACTS. THE BOI MONITORS FOREIGN INVESTMENTS UNDER THE FOREIGN BUSINESS REGULATION ACT AND PERIODICALLY DRAWS UP THE INVESTMENT PRIORITIES AND EXPORT PRIORITIES PLANS WHICH IDENTIFY "PIONEER" AND "PREFERRED NON-PIONEER" INDUSTRIES AND SPECIFIC PRODUCTS ELIGIBLE FOR INVESTMENT INCENTIVES. IN THE INITIAL YEARS OF OPERATION, FIRMS REGISTERED UNDER THESE CATEGORIES ENJOY LIBERAL TAX TREATMENT, TARIFF PROTECTION, THE RIGHT TO EMPLOY FOREIGN NATIONALS, PLUS PRIORITY IN CENTRAL BANK ALLOCATION OF UNCLASSIFIED

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FOREIGN EXCHANGE. WHOLLY FOREIGN-OWNED INVESTMENTS IN PIONEER AREAS MUST BE FILIPINIZED (60 PERCENT FILIPINO) WITHIN 30 YEARS EXTENDABLE FOR TWO 10-YEAR PERIODS BY THE BOI FOR FIRMS EXPORTING AT LEAST 50 PERCENT OF THEIR PRODUCTION. IN PREFERRED NON-PIONEER AREAS, FOREIGN INVESTMENTS GREATER THAN 40 PERCENT ARE PERMITTED IF THE SECTOR'S "MEASURED CAPACITY" IS NOT FILLED BY FILIPINOS AFTER THREE YEARS ON THE BOI LIST.

6. AN AGRICULTURAL INVESTMENTS INCENTIVES ACT AIMED AT ACCELERATING AGRICULTURAL PRODUCTION WAS PROMULGATED RECENTLY TO COMPLEMENT EXISTING INCENTIVES TO INDUSTRY GENERALLY. THE AGRICULTURAL INVESTMENTS PRIORITIES PLAN HAS JUST BEEN DRAWN UP BY THE BOI AND THE DEPARTMENT OF AGRICULTURE AND ANOTHER NATURAL RESOURCES-BASED INVESTMENT PRIORITIES PLAN IS BEING FORMULATED BY THE BOI AND THE DEPARTMENT OF NATURAL RESOURCES. INCENTIVES SIMILAR TO THOSE FOR PIONEER AND PREFERRED NON-PIONEER INDUSTRIES ARE ACCORDED TO INVESTMENT IN EXPORT PROCESSING ZONES. IN ADDITION TO THE BATAAN EXPORT PROCESSING ZONE, ANOTHER ONE IS TO BE SET UP IN MACTAN, CENTRAL PHILIPPINES WITHIN THE NEXT FIVE YEARS. INCENTIVES HAVE

ALSO BEEN ESTABLISHED TO ENCOURAGE THE LOCATING OF CORPORATE REGIONAL HEADQUARTERS IN THE PHILIPPINES.

7. THE LABOR SITUATION IS CHARACTERIZED BY PROHIBITION OF STRIKES AND LOCKOUTS IN "VITAL" INDUSTRIES (WHICH INCLUDES MOST MANUFACTURING FIRMS, PUBLIC UTILITIES AND OIL COMPANIES) AND A COMPULSORY ARBITRATION DECREE, WHICH HAS PRACTICALLY ELIMINATED STRIKES. IT IS GOP POLICY TO DISCOURAGE WAGE INCREASES TO FIGHT INFLATION.

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8. THE U.S. DEPARTMENT OF COMMERCE SURVEY OF CURRENT BUSINESS ESTIMATES THE BOOK VALUE OF U.S. INVESTMENTS IN THE PHILIPPINES AT \$830 MILLION AS OF END 1976. OF THE \$634 MILLION FOREIGN INVESTMENTS MONITORED BY THE CENTRAL BANK FROM 1970 TO 1976, U.S. INVESTORS ACCOUNTED FOR \$273 MILLION (43 PERCENT); JAPAN, \$162 MILLION (26 PERCENT); CANADA, \$43 MILLION; UNITED KINGDOM, \$34 MILLION; SWITZERLAND, \$25 MILLION; AND HONG KONG, \$24 MILLION. PRELIMINARY ESTIMATES FROM CENTRAL BANK AND BOARD OF INVESTMENTS DATA ON LEVELS OF NEW FOREIGN INVESTMENTS IN 1977 INDICATE THAT WHILE THERE WAS A SIGNIFICANT DECLINE IN FOREIGN INVESTMENTS REGISTERED UNDER THE BOI-SUPERVISED INCENTIVE LAWS (DOWN BY 40 - 50 PERCENT), THIS WAS OFFSET BY SUBSTANTIAL INCREASES IN INVESTMENT IN CB-CERTIFIED EXPORT-ORIENTED FIRMS (FIVE-FOLD INCREASE), EXPORT PROCESSING ZONE ENTERPRISES, THE NON-INCENTIVE CATEGORY, AND NEW INVESTMENT UNDER THE FOREIGN CURRENCY DEPOSIT SYSTEM. TOTAL INVESTMENT FOR 1977 IS EXPECTED TO BE IN THE \$160 TO \$180 MILLION

RANGE, COMPARED TO \$140 MILLION FOR 1976.

9. OPIC HAS HAD AN ACTIVE INSURANCE PROGRAM IN THE PHILIPPINES SINCE 1957. AS OF MARCH 1977 THERE WERE 90 UNCLASSIFIED

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ACTIVE POLICIES BY 39 DIFFERENT U.S. COMPANIES COVERING OVER \$300 MILLION IN INVESTMENTS. THERE WERE ANOTHER 21 PENDING APPLICATIONS COVERING AN ADDITIONAL \$100 MILLION IN PROPOSED INVESTMENTS AS OF THE SAME DATE. THE OPIC LOAN PROGRAM IS INCONSEQUENTIAL.

10. WHILE THE LEVEL OF NEW FOREIGN INVESTMENT INTO THE PHILIPPINES ROSE SOMEWHAT IN 1977, IT REMAINS BELOW THAT OBSERVED IN MANY OTHER DEVELOPING COUNTRIES IN ASIA. THIS CONTRAST REFLECTS NUMEROUS FACTORS INCLUDING THE RELATIVELY HIGH LEVELS ATTAINED IN THE PHILIPPINES IN EARLIER YEARS AND THE WORLDWIDE ECONOMIC SLOW-DOWN; UNCERTAINTIES GENERATED BY INCREASING GOVERNMENT MANAGEMENT OF THE ECONOMY PROBABLY HAD SOME EFFECT AS WELL. THE GOVERNMENT HAS TAKEN OVER OR REGULATED TEMPORARILY OR PERMANENTLY, EXPORT MARKETING OF SUGAR, COPRA, WOOD PRODUCTS AND CEMENT AS WELL AS IMPORTATION OF SELECTED ITEMS. IT HAS REQUIRED MAJOR FIRMS TO GROW RICE FOR THEIR EMPLOYEES, TAKEN OVER THE SHIPPING OPERATIONS OF A MAJOR STEVEDORING FIRM, AND REQUIRED THE USE OF PHILIPPINE FLAG TANKERS FOR IMPORTATION OF CRUDE OIL. PRICE CONTROLS HAVE AFFECTED THE PROFITABILITY OF PRODUCTION OF FERTILIZER, PHARMACEUTICALS, AND CANNED MILK, AND THE MARKETING OF PETROLEUM PRODUCTS. MAJOR INDUSTRIAL PROJECTS BEING CONSIDERED IN STEEL, COPPER SMELTING, AND PETROCHEMICALS ARE PROGRAMMED TO HAVE SIGNIFICANT OR CONTROLLING GOVERNMENT EQUITY.

11. THE GOVERNMENT HAS ALSO BEEN SENDING MIXED MESSAGES ON THE RULES UNDER WHICH FOREIGN FIRMS MIGHT INVEST. RECENTLY, THE GOP HAS INDICATED THAT SOME TAX INCENTIVES TO PREFERRED AREAS MAY BE SCRAPPED IN VIEW OF OFFICIAL FINDINGS THAT THE ACCUMULATED TAX LOSS UNCLASSIFIED

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DUE TO INCENTIVES HAS AMOUNTED TO ABOUT \$275 MILLION SINCE 1970. NEW CENTRAL BANK (CB) GUIDELINES RESTRICTED LOCAL BORROWINGS OF FOREIGN COMPANIES (MORE THAN 40 PERCENT FOREIGN-OWNED) BY PRESCRIBING LIMITS ACCORDING TO DEBT/EQUITY RATIOS. PROFIT AND

ROYALTY REMITTANCES HAVE TO BE APPROVED BY A PERMANENT INTER-AGENCY COMMITTEE WHICH OVERSEES COMPLIANCE WITH THE GUIDELINES. THE GUIDELINES WILL PROBABLY REQUIRE SUBSTANTIAL FINANCIAL ADJUSTMENTS BY SOME EXISTING FOREIGN INVESTMENTS. IN LATE 1977, A PRESIDENTIAL DECREE WAS ISSUED AMENDING THE PHILIPPINE PATENT LAW WHICH SUBSTANTIALLY LESSENS PROTECTION IN THE PHILIPPINES OF INTELLECTUAL PROPERTY BY SHORTENING OR ELIMINATING THE PERIOD FOR COMPULSORY LICENSING AND SETTING FIXED MAXIMUM ROYALTY RATES. OTHER ENVIRONMENTAL FACTORS OF PROCEDURAL RED TAPE, POOR QUALITY CONTROL IN THE MANUFACTURING SECTOR, AND INADEQUATE INFRASTRUCTURE DEVELOPMENT, PARTICULARLY IN THE TRANSPORT AND COMMUNICATION SECTORS, CONTINUE TO FRUSTRATE FOREIGN INVESTORS.

12. NEVERTHELESS, THE PHILIPPINES IS ORIENTED TOWARD PRIVATE ENTERPRISE. THE GOP HAS REITERATED ITS RELIANCE ON THE PRIVATE SECTOR AS THE PRIME MOVER OF DEVELOPMENT ACTIVITIES IN ITS FIVE-YEAR PHILIPPINE DEVELOPMENT PLAN FOR 1978-1982. THE GOP HAS SHOWN ITS WILLINGNESS TO CONSIDER FAVORABLY ANY TYPE OF INVESTMENT PROPOSAL, INSIDE OR OUT OF ITS OWN GUIDELINES, THAT COULD BE SHOWN TO BE MUTUALLY BENEFICIAL TO BOTH THE INVESTOR AND THE PHILIPPINES. THE COUNTRY HAS A LARGE POOL OF SKILLED AND MANAGERIAL LABOR. TECHNOCRATS HAVE A LARGE VOICE IN DETERMINING ECONOMIC POLICY AND PLANNING. ACCORDINGLY, THE COUNTRY OFFERS ATTRACTIVE INVESTMENT OPPORTUNITIES FOR FOREIGN INVESTORS WILLING TO INTEGRATE WITH AND COMPLEMENT THE PHILIPPINES' OWN DEVELOPMENT GOALS.

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: INVESTMENT CLIMATE
Control Number: n/a
Copy: SINGLE
Draft Date: 01 feb 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 jan 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
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Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
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From: MANILA
Handling Restrictions: n/a
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Office: ACTION EA
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 77 STATE 244738, 77 MANILA A-251
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 16 feb 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3444138
Secure: OPEN
Status: NATIVE
Subject: UPDATE OF INVESTMENT CLIMATE STATEMENT
TAGS: EINV, EIND, EFIN, RP
To: STATE
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/396d08ce-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014